

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

BYSHOP ELLIOTT

Plaintiff,

vs.

ANSWER

BUFFALO CITY SCHOOL DISTRICT, ET AL.,

Index No. 17 CV 397-WKS

Defendants.

BUFFALO CITY SCHOOL DISTRICT, by its attorney, Assistant Legal Counsel, Joel C. Moore, *of counsel* to General Counsel, Nathaniel Kuzma, Esq., for its Answer to Plaintiff's Complaint herein state:

1. Admit the allegations contained in the paragraphs numbered "12" and "44" of the Complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the paragraphs numbered "4", "6", "7", "8", "13", "15", "16", "19", "20", "21", "22", "23", "25", "28", "29", "30", "33", "42", "43", and "45" of the Complaint and respectfully refer all questions of law to the Court.
3. Deny the allegations contained in paragraphs "1", "5", "17", "18", "32", "36", "37", "38", "40", "41", "46", and "47" of the Complaint as they pertain to the Buffalo City School District, and deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as they pertain to the remaining Co-Defendant.

4. In response to paragraph "2", the Buffalo City School District admits that it supports LGBTQ rights and denies the remaining allegations contained in the paragraph.
5. In response to paragraph "3", the Buffalo City School District admits that students at McKinley High School have circulated one or more petitions with regard to establishing a GSA Club and denies the remaining allegations contained in the paragraph.
6. In response to paragraph "9", the Buffalo City School District admits that Byshop Elliott was a junior at McKinley High School during the 2016-17 and lacks information sufficient to form an opinion as to the truth of falsity of the remaining allegations contained in the paragraph.
7. In response to paragraph "10", the Buffalo City School District admits that Crystal Boling- Barton is the Principal at McKinley High School, that she has held that position since 1987, and lacks information sufficient to form an opinion as to the truth of falsity of the remaining allegations contained in the paragraph.
8. In response to paragraph "11", the Buffalo City School District admits that it is the City of Buffalo's public school district, it employees school administrators who run each of the District's public schools, it receives federal funding for its schools, Crystal Boling-Barton is an administrator at one of the District's schools, and lacks information sufficient to form an opinion as to the truth of falsity of the remaining allegations contained in the paragraph.
9. In response to paragraph "14", the Buffalo City School District admits that McKinley High Schools has multiple student clubs that meet at the school during non-instructional time, and lacks information sufficient to form an opinion as to the truth of falsity of the remaining allegations contained in the paragraph.

10. In response to paragraph "24", the Buffalo City School District lacks information sufficient to form an opinion as to LGBTQ students' "view" of GSA, and denies the remaining allegations contained in the paragraph.
11. In response to paragraph "26", the Buffalo City School District lacks information sufficient to form an opinion as to LGBTQ students' "view" of GSA, and denies the remaining allegations contained in the paragraph.
12. In response to paragraph "26", the Buffalo City School District denies it has a policy and practice to allow new student clubs to form at McKinley according to the procedure established by Principal Boling-Barton and lacks information sufficient to form an opinion as to the truth or falsity of the remaining allegations contained in the paragraph.
13. In response to paragraph "27", the Buffalo City School District admits that an application for a GSA club was submitted to Principal Boling-Barton in 2014 and lacks information sufficient to form an opinion as to the truth or falsity of the remaining allegations contained in the paragraph.
14. In response to paragraph "31", the Buffalo City School District admits that it and a representative from the NYCLU had one or more conversations with regard to McKinley High School during 2016, and denies the remaining allegations contained in the paragraph.
15. In response to paragraph "34", the Buffalo City School District admits that Principal Boling-Barton received an application for a GSA Club on or about October 3, 2016 via e-mail, and lacks information sufficient to form an opinion as to the truth or falsity of the remaining allegations contained in the paragraph.
16. In response to paragraph "35", the Buffalo City School District admits that a McKinley High School staff member sent Principal Boling Barton a follow up e-mail regarding the October 3, 2016 GSA Club request, and lacks information sufficient to form an opinion as to the truth or falsity of the remaining allegations contained in the paragraph.

17. In response to paragraph "39", the Buffalo City School District lacks information sufficient to form an opinion as to the truth of falsity with regard to a statement made by "a representative of the District," and admits the remaining allegation in the paragraph.
18. Deny each and every allegation or part thereof not specifically admitted, denied or otherwise controverted.

AS AND FOR A FIRST DEFENSE

19. The Complaint, in whole or in part, fails to state a cause of action against the Buffalo City School District and must be dismissed.

AS AND FOR A SECOND DEFENSE

20. The Buffalo City School District affirmatively asserts that it engaged in good faith efforts to comply with the law.

AS AND FOR A THIRD DEFENSE

21. The Buffalo City School District asserts the *McDonnell Douglas* burden of presenting a legitimate nondiscriminatory reason.

AS AND FOR A FOURTH DEFENSE

22. The Buffalo City School District asserts that the Plaintiff does not have standing.

AS AND FOR A FIFTH DEFENSE

23. Any and all restrictions placed on student speech, expression or association by the District were permissible restrictions under the applicable Constitutional standards.

AS AND FOR A SIXTH DEFENSE

24. The Plaintiff has not been damaged or suffered a concrete injury or irreparable harm, as another avenue of speech and association on school property is available through the Districts policies, and no students involved have been disciplined or reprimanded for their speech or expression.

AS AND FOR A SIXTH DEFENSE

25. There is no basis for liability under 42 USC § 1983, as there is no causal connection between any District policy and any Constitutional violation.

PRAYER FOR RELIEF

WHEREFORE, the Defendant, Buffalo City School District requests judgment dismissing the Complaint in its entirety with prejudice together with the costs and disbursements of this action, or, in the event that the Defendant, Buffalo City School District is adjudged liable, apportioning such liability in accordance with the relative culpability of all responsible parties whether named or unnamed, and granting such other and further relief as the Court deems appropriate.

Dated: June 30, 2017
Buffalo, New York

NATHANIAL KUZMA, ESQ.
General Counsel


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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

BYSHOP ELLIOTT,

Plaintiff,

17-CV-397-WKS

vs.

BUFFALO CITY SCHOOL DISTRICT, ET AL.,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2017, I mailed the foregoing Answer, by the United States Postal Service, to the following non-CM/ECF participants:

Crystal Boling-Barton
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DATED: Buffalo, New York
June 30, 2017



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